

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBERS: 93-0731 CSET
Controlled Substance Excise Tax
1993**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the *Indiana Register* and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the *Indiana Register*. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax: Imposition

Authority: IC § 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax. However, the taxpayer has never articulated any specific legal or factual grounds of any kind for this protest. The letter notifying the Department of the taxpayer's intent to protest the assessment did not specify any such issue/s. The Department, in reviewing the file, also found no evidence of any later communications from the taxpayer or anyone purporting to act for the taxpayer raising any specific issue/s.

STATEMENT OF FACTS

The Indiana Department of State Revenue (hereafter "I.D.S.R." or "the Department"), Legal Division, scheduled an in-person protest hearing on December 7, 1998 at 9:30 p.m. EST for the tax type/s and period/s shown above. The Department gave the taxpayer written notice of the date, time and place of the hearing by certified and first class mail at his last known address. The U.S. Postal Service returned the certified notice, but did not return the first class notice. The taxpayer failed to elect the option of a telephonic protest hearing stated in that notice and wholly failed to appear at the scheduled date, time and place, either in person or by duly appointed representative. The taxpayer also failed to submit any briefs or documentary evidence.

Since the taxpayer failed to appear at the protest hearing, the Department will take the facts that IC § 6-7-3-5 specifies as necessary to support an assessment of Controlled Substance Excise Tax, together with the amount of the assessment, as being true and established.

DISCUSSION

IC § 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of controlled substances in Indiana. The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid; the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC §§ 6-8.1-5-1(a) (1988) and 6-8.1-5-1(b) (1993). The taxpayer has submitted no evidence or legal authority whatever pursuant to this statutory duty to rebut the prima facie validity of the assessment. The taxpayer's failure to appear also acts as a waiver of protest rights by virtue of IC §§ 6-8.1-5-1(c)(2) and 6-8.1-5-1(i)(2) (1993), which require the Department to demand payment under such circumstances.

FINDING

The taxpayer's protest is denied.